UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/749,879 | 12/31/2003 | Michael E. Browne | POU920030116US1 | 8880 |

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| EXAMINER |
|---|
| LIE, ANGELA M |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2163 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

| *Advisory Action*<br>*Before the Filing of an Appeal Brief* | Application No.<br>*10/749,879* | Applicant(s)<br>BROWNE ET AL. |
|---|---|---|
| | Examiner<br>ANGELA M. LIE | Art Unit<br>2163 |

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED <u>21 January 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *8-20*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☒ Other: <u>See Continuation Sheet</u>.

/Angela M Lie/<br>Examiner, Art Unit 2163

/Wilson Lee/<br>Primary Examiner, Art Unit 2163

Continuation of 13. Other:  Applicant's arguments filed January 21, 2009 have been fully considered but they are not persuasive. On page 2, the Applicant alleges that there is no discussion of metadata per se in Sheill, nor is there any discussion that a request is received through input devices wherein metadata is associated with the request, let alone the particular metadata functioning as discussed further below, in accordance with Applicant's protocol". The Examiner disagrees with the above allegation. First of all, claim language is silent with respect to the actual dependence between received request and metadata, the term "associated" is extremely broad and if the metadata, in the prior art interpreted as tags stored in BTB, have any relation to request (i.e. incoming instruction) then there is an association between those elements. Moreover, the term "metadata" according to the broadest definition is data about data. Clearly the tags stored in BTB would not be there if the instruction would not be submitted to an input device. Thus the tags taught herein are indeed metadata associated with the requests (i.e. instructions).

2.        Bridging to the following page, the Applicant contends that "there is no teaching or suggestion in Shiell of data being stored and maintained separately from the received metadata by a data object manager of a storage subsystem of the computer environment".  The Examiner disagrees. First of all the Examiner would like to note that it is unclear what data the Applicant is referring to. For the purposes of the Examination, the Examiner interpreted data as incoming instructions. Then through out the Shiell's disclosure it is self evident that BTB does not store instructions (i.e. data). Instead it stores tags referencing those tasks (column 2, line 5). Hence the Examiner maintains that data and metadata (i.e. content of BTB associated with instructions) are stored separately.

3.        Then on page 4, the Applicant asserts that "there is no discussion of the requester sending the request, or any discussion of the request manager, or more importantly, of the data object manager of a storage subsystem of the computer environment". The Examiner disagrees. Since the Applicant did not define different types of manager, the Examiner can assign the broadest reasonable interpretation to those phrases. Consequently requests manager corresponds to the BTB logic (Figure 3, wherein receipt could be interpreted as creation of the BTB record itself) and data object manager is interpreted as pre-fetch control logic 23.

4.        In the end of same paragraph on page 4, the Applicant also submits that "thereis no subsequently received request or instruction in Shiell, but rather, the consecutive instruction would already be resident in the processor". The Examiner disagrees. According to the prior art a user initiates the series of request (i.e. instruction) by providing an input. Then BTB receives first instruction which is can be temporarily stored in instruction buffer (60). The metadata about the branch instruction is created based on the sequence of instructions. Then once the history is established (if not the estimation is generated) the BTB logic can determine the subsequent instruction. Then pre-fetch logic can access instruction that is about to be received, hence facilitating faster and more efficient code execution.    .